STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JOHN M. RUSIECKI, Deceased.

YVONNE D. JENSEN, Personal Representative, TONI RUSIECKI and JOAN FLOYD,

Petitioners-Appellees,

v

CHARLES RUSIECKI, LOWELL ALAN WOOD, DEAN C. WOOD, BRIAN WOOD and TRACI RAREDON,

Respondents,

and

STEPHEN RUSIECKI, a/k/a STEPHEN G. RUSIECKI,

Respondent-Appellant.

UNPUBLISHED
June 12, 2007

No. 266145
Oakland Probate Court
LC No. 2003-291304-DE

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Respondent Stephen Rusiecki appeals as of right the probate court order ratifying and approving the settlement agreement between petitioners for admission to probate of the last will and testament of John M. Rusiecki and for payment of settlement proceeds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case essentially involves a will contest in which the decedent left his entire estate, valued at approximately $322,788, to his stepdaughter and personal representative, petitioner Yvonne Jensen. The surviving blood relatives of the decedent were his nephew, respondent; his nieces, petitioners Toni Rusiecki and Joan Floyd; his nephew, Charles Rusiecki; and four children of his deceased niece: Lowell Wood, Dean Wood, Brian Wood, and Traci Raredon. Petitioners Toni Rusiecki and Joan Floyd initially sought to have the will declared void so that the decedent's blood relatives could inherit the entire estate. Charles Rusiecki and the four children of decedent's deceased niece, however, all signed waivers consenting to petitioner

Jensen's motion to have the will probated. Petitioner Jensen and petitioners Toni Rusiecki and Joan Floyd eventually entered into a settlement agreement whereby Toni and Joan would forfeit their will contest in exchange for $29,000 each. Petitioners subsequently filed a petition for ratification and approval of the settlement agreement, and the trial court entered an order ratifying and approving the settlement agreement, admitting the will to probate, and paying out the settlement proceedings.

Respondent subsequently filed a "motion for intervention of right," challenging the settlement agreement and belatedly requesting that the trial court refrain from approving it. The trial court denied the motion, noting that respondent did "not cite applicable court rules or provide appropriate support for granting the requested relief." Respondent moved for relief from judgment, and the trial court denied the motion. The trial court then entered an order reaffirming the earlier order ratifying and approving the settlement agreement.

The issues raised by respondent on appeal involve the interpretation and application of court rules, which we review de novo. *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). "The rules governing statutory interpretation apply equally to the interpretation of court rules." *Hyslop v Wojjusik*, 252 Mich App 500, 505; 652 NW2d 517 (2002). "If the plain and ordinary meaning of the language employed is clear, then judicial construction is neither necessary nor permitted, and unless explicitly defined, every word or phrase should be accorded its plain and ordinary meaning, considering the context in which the words are used." *Id*.

Respondent argues that he did not receive the timely notice to which he was entitled under MCR 5.108(B), which provides that "[s]ervice by mail of a petition . . . must be made at least 14 days before the date set for hearing, or an adjourned date." Petitioners served respondent with the petition for ratification and approval of the settlement agreement and notice of the October 18, 2005 hearing by mail on October 6, 2005, less than 14 days before the hearing date.

MCR 5.102 provides that "[a] petitioner . . . must cause to be prepared, served, and filed, a notice of hearing for all matters requiring notification of interested persons." MCL 700.1401(1) also provides that "[i]f notice of a hearing on a petition is required and *except for specific notice requirements as otherwise provided by supreme court rule*, the petitioner shall cause notice of the time and place of the hearing on the petition to be given to each interested person." (Emphasis added.) Further, MCL 700.1401(1)(a), like MCR 5.108(B), provides that "[*u*]*nless otherwise provided by supreme court rule*, notice must be given by . . . mailing a copy at least 14 days before the time set for the hearing . . . ." (Emphasis added.) Thus, interested persons are entitled to notice by mailing at least 14 days before the hearing. As an heir, respondent was a "person[] interested in . . . a petition to probate a will . . . ." MCR 5.125(C)(1)(c). However, the application of MCR 5.125(C) is subject to MCR 5.125(B). That is, "[c]ertain special conditions must be met before particular interested parties are entitled to notice under the rule." 12 Michigan Pleading & Practice (2d ed), § 98.13, p 319. MCR 5.125(B)(1) provides that "[o]nly a claimant who files a claim with the court . . . need be notified of specific proceedings under subrule (C)." A review of the lower court record reveals that respondent did not file a claim with the court. Accordingly, he was not entitled to notice under MCR 5.108(B), and is not entitled to relief.

Respondent next argues that the probate court failed to join him as a necessary party under MCR 2.205(A)[1] and (B).[2] We disagree. MCR 5.101(A) explains that "[t]here are two forms of action [in probate court], a 'proceeding' and a 'civil action.'" MCR 5.101(B) provides that "[a] proceeding is commenced by filing a . . . petition with the court," as was the case here. MCR 5.101(C), on the other hand, provides for two types of actions, not applicable here, which "must be titled civil actions," and that are "commenced by filing a complaint and *governed by the rules which are applicable to civil actions in circuit court*." (Emphasis added). MCR 5.001(A) provides that "[p]rocedure in probate court is governed by the rules applicable to other civil proceedings, *except as modified by the rules in this chapter*." (Emphasis added). Respondent's claim that the trial court erred in failing to join him as a necessary party to the action fails where this matter is not an "action" to which necessary joinder applies. See *In re Brown*, 229 Mich App 496, 501-502; 582 NW2d 530 (1998). Accordingly, respondent is not entitled to relief on this issue.

We affirm.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio

[1] MCR 2.205(A) concerns necessary joinder, and provides that "persons having such interests in the subject matter of *an action* that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." (Emphasis added).

[2] MCR 2.205(B) concerns the effect of failure to join, and provides that "[w]hen persons described in subrule (A) have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in *the action*, and may prescribe the time and order of pleading." (Emphasis added).